



Her Excellency Ms. Päivi Kairamo
Ambassador
Permanent Representative
Permanent Mission of Finland
Avenue de France, 23
1211 Genève

His Excellency Mr. Fodé Seck
Ambassador Extraordinary and
Plenipotentiary
Permanent Representative
Permanent Mission of the Republic of
Senegal to the United Nations Office
and other international organizations in
Geneva
Chemin de Joinville, 26
1216 Cointrin

April 11, 2014

Madam,
Sir,

I have the honor to write to refer to my letter to you of April 2, 2014, enclosing a Report of Misconduct.

I have discovered an error in the Report which I wish to correct by this letter. The affected portion is paragraph 26, in which it was stated that each of the two referenced staff members was granted a position without competition. I have learned that one of them was subject to a competition, although the primary point regarding the inappropriateness of her appointment remains valid.

./. In the attached amended version of my Report of Misconduct, this inadvertent error has been corrected, and the main point has been clarified with a reference to normal practice regarding maintaining the independence of the internal investigation function.

/...

Her Excellency Ms. Päivi Kairamo, His Excellency Mr. Fodé Seck, Genève - April 11, 2014

On Monday April 14, I also expect to deliver to you a version of my Report translated into French. This will include the amended paragraph 26.

Accept, Madam, Sir, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'James Pooley', with a long horizontal flourish extending to the right.

James Pooley
Deputy Director General

Cc: Regional coordinators

**REPORT OF MISCONDUCT BY DIRECTOR GENERAL
(AS AMENDED APRIL 11, 2014)**

**TO THE CHAIRS OF THE GENERAL ASSEMBLIES AND COORDINATION
COMMITTEE OF WIPO:**

1. I write to report what I believe is serious misconduct by WIPO's Director General, Francis Gurry. Specifically, I draw your attention to (1) the taking of DNA from senior WIPO staff members without their knowledge or consent, in violation of fundamental human rights, as well as efforts to suppress evidence and investigation of the incident; and (2) evidence of the corruption of a recent procurement that was redirected and awarded to an Australian company led by an acquaintance of Mr. Gurry, even though that company had not been selected in the competitive process. These two issues will be described in greater detail below.

2. I am a Deputy Director General of WIPO, with a term that ends on November 30, 2014, when I plan to return to the private sector. I do not wish to renew my mandate or seek any other position within the United Nations. My interest in making this report is to uphold the oath I took to the United Nations, and to comply with the obligation of all staff to report misconduct.

3. I believe that when we remain silent in the face of wrongdoing by leaders, we become complicit in that behavior. Recognizing the critical importance of leadership at the top of WIPO, and the virtually unchecked powers of the office of Director General, a former U.S. Ambassador said in 2007 that the "member states and employees of WIPO deserve to have an organization that is led with the highest professional and ethical standards". Most of our member states' legal and political traditions place great importance on transparency and accountability; and we abhor the idea of impunity for government officials. At a personal level, my training and experience over almost forty years as a lawyer require that I identify and resist corruption.

RECENT EVENTS

4. This report is animated by recent events. With respect to the theft of DNA, I refer first to an article published in *Le Temps* on March 1, 2014. (A copy of the original French version, and of an English translation, are attached as Exhibits 1 and 2, respectively.) Secondly, I refer to a press conference called by Mr. Gurry on March 6, 2014. (A copy of a report by *Intellectual Property Watch* published the same day is attached as Exhibit 3.) In each instance, Mr. Gurry was confronted with the DNA affair but deflected the inquiry. Rather than denying the allegations, he called them "unsubstantiated", which as will be demonstrated below, is patently false. But most importantly, he attacked the media for even asking about it, calling the issue "trivial." To dismiss as "trivial" the theft of

individuals' DNA crosses a moral line, because personal privacy is a fundamental human right guaranteed by the UN Declaration on Human Rights, as well as by the International Covenant on Civil and Political Rights. Violating those human rights – or trivializing the violation – is inconsistent with core values of the United Nations.

5. I believe that the incidents I report here constitute violations of national and international law, and given Mr. Gurry's announced opinion about the "trivial" nature of the human rights at stake, such violations can be expected to continue absent intervention of the Member States.

BACKGROUND OF DNA THEFT

Swiss investigation of anonymous letters

6. In 2007, controversy surrounded Kamil Idris, the Director General of WIPO, over his having misrepresented his age when applying to work at WIPO. Mr. Gurry, who had been at WIPO since 1985, was at the time a Deputy Director General and had served before that as Legal Counsel, also under Mr. Idris. He wished to replace Mr. Idris in a special election that would be held in 2008. (See highlighted portion of Exhibit 4, which is a copy of the complaint filed by Mr. Gurry.)

7. In October 2007, three anonymous letters were delivered to various people at WIPO, alleging financial and personal impropriety by Mr. Gurry and his wife, some of it quite specific. Mr. Gurry immediately filed a criminal defamation case with the Swiss authorities against "unknown persons" and requested an investigation. (A copy of his "Declaration" dated October 12, 2007, with attachments, is attached as Exhibit 4.)

8. In conversation with the Swiss police, Mr. Gurry and the WIPO head of security, Jan Van Hecke, learned that the letters carried fingerprints and DNA. Mr. Van Hecke wrote a memorandum dated February 8, 2008 to Mr. Idris, requesting his permission for the Swiss police to make contact with 24 WIPO employees believed to have received or otherwise handled the letters. I am informed¹ that Mr. Idris refused, based on the advice of Michele Weil-Guthman, his Chief of Staff and a former judge, who felt that it would be wrong to do this without formally lifting the employees' immunity. I understand that Mr. Gurry was unhappy with this decision, since he viewed the DNA comparison as the best way to prove his suspicion that two senior colleagues, Sherif Saadallah and Carlotta Graffigna, were responsible for the letters. (A copy of the "Memorandum

¹ The facts related in this document are, to the best of my knowledge, established primarily by the documentary record. However, when I say that I am "informed" or "understand" that a fact exists, this means that someone with personal knowledge has revealed it to me.

re Diplomatic Immunity – Forensic Investigation” dated February 8, 2008 is attached as Exhibit 5.)

9. On February 13, 2008, Australia nominated Mr. Gurry to run in the election that had been arranged to choose a successor to Mr. Idris. At about the same time, I understand that Mr. Gurry agreed that two other high-ranking WIPO staff, Binying Wang and Geoffrey Onyeama, would be designated as Deputy Directors General if he were elected.

March 2008 secret theft of property from WIPO staff

10. Sometime in early March 2008, Drew Donovan, a member of the WIPO security staff (and author of the report attached to the February 8 memorandum), secretly entered the offices of Mr. Saadallah, Mrs. Graffigna and Ms. Weil-Guthmann, in search of items that might carry their DNA. He took away personal property such as cigarette and candy containers, lipstick, dental floss, tape and staplers. These were apparently delivered to the Swiss police on or before March 17, as reflected in the forensic analysis report provided by the Hospital of the University of Geneva. (A copy of the June 9, 2008 HUG DNA Analysis Report is attached as Exhibit 6. Highlighted portions at pages 3 and 5 indicate that the DNA of Mr. Donovan was found on some of the items taken from the offices.) None of the employees gave their permission for this, or even knew it was happening.

May 13, 2008 vote and request for lifting of immunity

11. On May 13, 2008, Mr. Gurry was selected by the Coordination committee to be nominated for Director General, by a margin of one vote (42 to 41). This vote would have to be confirmed by the entire group of Member States at the next General Assemblies in September.

12. That same day, the Swiss Mission sent a letter to Mr. Idris asking that immunity of ten WIPO employees be lifted, so that they could be “interviewed”. It is not known yet how these names were chosen, but they included Mr. Saadallah, Mrs. Graffigna and Ms. Weil-Guthmann (although the latter had not been among those named in the February 8 memorandum). Based on that letter, the immunity of all ten, plus Mr. Gurry, was lifted on May 15. (Copies of the letters of May 13 and 15, 2008 are attached as Exhibit 7.)

May 26, 2008 taking of DNA samples and fingerprints

13. The WIPO employees were asked to appear for an “interview” on May 26. When they arrived, there were no interviews, but they were fingerprinted and cheek swabs were used to collect DNA samples. (Inexplicably, it seems that no samples were taken from Mr. Gurry, Mr. Van Hecke, or Mr. Keplinger.)

Forensic analysis of samples

14. The Swiss authorities apparently provided all the DNA samples, including those taken secretly from the employees' offices, to a forensic laboratory at HUG. The analysis compared DNA from three sets of items: (1) the anonymous letters, (2) the personal property taken in March, and (3) the cheek swabs taken in May. Everyone who provided samples was excluded as a suspect. However, I understand that this news was not communicated to the individuals until more than three months later, in late September, just after the General Assemblies at which Mr. Gurry's election was confirmed. In the meantime, the HUG DNA Analysis Report remained a secret.

September 2008 General Assemblies and notice to individuals

15. Mr. Gurry was finally confirmed as Director General on September 22, 2008. One week later, on September 29, the Swiss authorities gave notice to the individuals that they had been cleared of suspicion. Both Mr. Saadallah and Ms. Weil-Guthman – who were still unaware that their DNA had been taken surreptitiously in March – asked that WIPO conduct an investigation into the May 26 "interviews" at the police station, where they had been surprised with a demand to be fingerprinted and provide DNA samples. Mr. Idris agreed to do that; but with Mr. Gurry's taking over as Director General, the investigations were stopped. However, Mrs. Graffigna persisted in trying to find out what had happened, and asked to see her file at the prosecutor's office. Eventually, in December, she was allowed to do so. In it, she found the HUG DNA Analysis Report and discovered for the first time the secret theft that had occurred in March.

2009-2010 a victim tries to investigate

16. On April 4, 2009, Mrs. Graffigna filed a letter complaint with the Swiss Judicial Police. The letter described two matters, one of which was the secret taking of her personal property and DNA. (A copy of Mrs. Graffigna's April 4, 2009 complaint letter is attached as Exhibit 8.) Apparently no action was ever taken on this complaint.

17. In May 2010, Mrs. Graffigna filed a case with the International Labor Organization Administrative Tribunal (ILOAT) regarding the unauthorized removal of her property and DNA. Later, in September, she formally requested a ruling from the WIPO Ethics Officer regarding the same matter. (A copy of her "Request for a Legal Opinion" dated September 26, 2010 is attached as Exhibit 9.)

ATTEMPTS TO SUPPRESS FACTS AND INVESTIGATION

2011 Gurry transfers Graffigna post to Singapore, settles with gag order

18. In or about September 2010 WIPO filed its defense in Mrs. Graffigna's ILOAT case, and on March 14, 2011 she filed her rejoinder, which included a document indicating that in August of 2008 Mr. Gurry had targeted for termination the same three people whose DNA had been secretly taken the previous March. This document apparently disturbed Mr. Gurry, who several weeks later ordered Mrs. Graffigna's post transferred to Singapore. I am informed that Mr. Gurry acknowledged at the time that he knew she could not make the move due to family constraints, and that this would allow him to terminate her employment. A dispute ensued, which was settled just before the September meeting of the General Assemblies, in a private agreement with WIPO that prohibited Mrs. Graffigna from discussing her complaints. (A copy of Mr. Gurry's letter dated September 23, 2011, confirming that Mrs. Graffigna would not be transferred, is attached as Exhibit 10.)

November 2012 Brown files request for investigation

19. Shortly after Mr. Gurry had threatened to move Mrs. Graffigna to Singapore, Dr. Miranda Brown arrived at WIPO to take the newly-created post of Strategic Advisor to the Director General, at the D2 level. She had been the Deputy Permanent Representative at the Mission of Australia, and had come to know Mr. Gurry in connection with his 2008 election campaign. I understand that, although she was not then aware of the theft of DNA described above, one of the first tasks she undertook was to try to convince Mr. Gurry to abandon his plan to transfer Mrs. Graffigna's post.

20. I am informed that, following a series of actions by Mr. Gurry with which she disagreed, Dr. Brown determined in 2012 that he had made it impossible for her to remain at WIPO, and she resigned. (A copy of Dr. Brown's resignation letter dated November 23, 2012, is attached as Exhibit 11.) Before she left, however, she filed a formal request for investigation into some of Mr. Gurry's actions. This ultimately included a request to conduct an investigation of the theft of DNA that had occurred in early 2008.

WIPO IAOD performs "preliminary evaluation"

21. Under WIPO's rules, internal investigations are handled by the Internal Audit and Oversight Division (IAOD), the Director of which at that time was (and still is today) Thierry Rajaobelina. He has a dual reporting relationship, being responsible both to the Director General and to the Independent Audit and Oversight Committee (IAOC), which meets quarterly at WIPO to consider a number of accounting, management and oversight issues. In spite of the obvious conflict of interest regarding Dr. Brown's complaint about Mr. Gurry, it was decided that IAOD would perform a "preliminary evaluation" pursuant to the WIPO rules. It is very important to note that a "preliminary evaluation" is different

than an "investigation" under those rules.² The purpose of an evaluation is to determine if wrongdoing occurred, but not necessarily who did it. If wrongdoing were found, then the Director of IAOD would recommend an "investigation," which in this case presumably would have been carried out by an external professional retained by the IAOC.

22. The team from IAOD that Mr. Rajaobelina assigned to assist him with the preliminary evaluation consisted of Anne Coutin, Head of Investigation Section, and Martin Philibert, who was on a temporary contract. I understand that they proceeded with a review of documents and interviews of witnesses in early 2013.

March 2013 Gurry tries to intimidate IAOD Director

23. By March 2013 Mr. Rajaobelina was preparing to deliver his preliminary evaluation report to the IAOC, which was to have its quarterly meeting during the week beginning March 25. However, in the weeks preceding that meeting, I understand that Mr. Gurry demanded of the WIPO Legal Counsel and HR Director how he could terminate Mr. Rajaobelina's appointment. He also tried to intimidate him in other ways, including working with Mr. Donovan – who by that time had left WIPO and, as I understand it, with the help of Mr. Gurry, obtained a position in security at the ITU – to send a letter to the Chair of the IAOC alleging that Mr. Rajaobelina had conspired with me to influence Mr. Donovan's possible testimony. (A copy of Mr. Donovan's letter dated March 12, 2013 is attached as Exhibit 12; a copy of my responsive letter with enclosed statement dated March 25, 2013 is attached as Exhibit 13.)

24. I understand that when he learned of the Donovan letter, Mr. Rajaobelina, knowing that Mr. Philibert was a close personal friend of Mr. Donovan's, took him off the case, but the work had by that time been largely finished, and it remained only for Mr. Rajaobelina to deliver his recommendation to the IAOC. But the intimidation continued, as he was called into an extraordinary meeting in the early afternoon of March 25 with Mr. Gurry, the Chair of WIPO's General Assemblies, the Chair of its Coordination Committee, and three members of the IAOC, to question Mr. Rajaobelina about the evaluation. This occurred in violation of WIPO rules requiring that such work of the IAOD remain confidential.

IAOD decision not to investigate

² The IAOD Investigation Procedure Manual (paragraph 20) defines a "Preliminary Evaluation" as "[t]he process of collecting, preserving and securing basic evidence, and the evaluation of this evidence to determine whether an investigation into reported allegations of wrongdoing is warranted." The Manual (paragraph 15) defines "Investigation" as a "formal fact finding enquiry to examine allegations of misconduct and wrongdoing in order to determine whether they have occurred and if so, the person or persons responsible."

25. The meeting with Mr. Rajaobelina apparently had the intended effect. I understand that later that week he delivered a recommendation to the IAOC that there be no investigation of the claims, including the DNA theft, explaining that Mr. Gurry at the time was a Deputy Director General and therefore could not possibly have caused Mr. Donovan to do what he did. This recommendation was fatally flawed for at least two reasons, over and above the procedural irregularities that had by then corrupted it: first, there was strong circumstantial evidence that Mr. Gurry – the only one with a personal interest in proving who had sent the anonymous letters – had responded to Mr. Idris' refusal of his request by taking matters into his own hands and setting up the illegal seizure, either directly with Mr. Donovan or through Mr. Donovan's hierarchical supervisor Ms. Wang, who by that time was a Deputy-in-waiting for Mr. Gurry's future team. Second, the "preliminary evaluation" process, according to WIPO rules, is directed only at whether misconduct occurred, and not who did it; therefore, unless such a break-in and theft was considered proper behavior, the only correct recommendation under the applicable procedures should have been to investigate it, to determine exactly how it happened. Instead, Mr. Rajaobelina re-framed the issue as whether his immediate boss Mr. Gurry had had the *de jure* authority to issue a direct order to Mr. Donovan. By posing the question that way, an outcome comfortable to Mr. Gurry was assured.

Rewards given to the two investigators

26. As noted above, Mr. Rajaobelina allowed Mr. Philibert's contract to run out, and he left WIPO. I understand that subsequently he met Mr. Gurry informally and told him that his employment at WIPO had expired, whereupon Mr. Gurry directed Mr. Rajaobelina to re-hire him without competition, which he did. In addition, later in 2013 Mr. Gurry granted Anne Coutin a transfer to take over as Head of the Policy and Law Section of the Human Resources Department. This unit of WIPO is responsible for handling the results of investigations that come from IAOD, and so in effect he has put her in charge of reviewing her own work. This assignment was inconsistent with recommendations of the Joint Inspection Unit on avoiding compromising the independence of the investigation function.

ANALYSIS OF DNA THEFT

The issue of theft of DNA is not "trivial"

27. The Universal Declaration of Human Rights states in Article 3 that everyone has the right to security of their person. Article 12 guarantees freedom from invasion of privacy, and Article 17 requires that no one be arbitrarily deprived of property. Although WIPO has in the past argued that the UDHR does not apply to it or its staff, the ILOAT has rejected this position.³ Indeed, it would be fatuous to suggest that the United Nations – the organization charged with oversight in

³ For example, see ILOAT Judgment No. 2292 ¶11 and Judgment No. 1369 ¶16.

the protection of these fundamental human rights – is itself free to ignore and violate them. The same reasoning should apply to the right to privacy that is guaranteed by Article 17 of the International Covenant on Civil and Political Rights.

28. What happened in March 2008 was nothing less than a burglary of personal property that carried biological evidence of the persons who owned it. The secret taking of that property – without notice or permission and without lifting of immunity – should shock the conscience of any civilized person. Under no circumstances could such a violation of human rights properly be labeled as “trivial”. In fact, that someone in a position of leadership within the United Nations (Mr. Gurry currently serves not only as Director General of WIPO but also as the appointed Chair of the UN’s High Level Committee on Management and as a member of the ITU’s Broadband Commission, where privacy issues are paramount) could repeatedly characterize the issue this way is no less shocking than the original violations.

The allegations are “substantiated” by evidence

29. Mr. Gurry in his statements to the press has also repeatedly referred to the theft of DNA at WIPO as “unsubstantiated allegations”. This rhetorical waive of the hand cannot withstand the slightest scrutiny. If the question is whether “substantial” evidence exists to support the allegations, the answer is, clearly and unmistakably, yes.

30. Evidence comes in many forms. For the most part, this report is based on facts that appear in documents that are contemporaneous with the events. Evidence can also come from persons with knowledge of the facts, who speak from their recollection. Even a person’s statement about what another has told him can be evidence of pertinent facts, and can be taken as an important signal of the need to inquire further.

31. Evidence can be direct or circumstantial. In the classic criminal case, there is seldom direct evidence of the crime being committed. This is why we speak of the “smoking gun”, which when we see it allows us to infer the fact that the gun has been fired, even though we didn’t see that happen. Most criminal convictions are based on circumstantial evidence, which often can be just as strong or stronger than direct evidence.

32. Applying these principles to the matter at hand, we see an extremely strong set of both direct and circumstantial evidence. In fact, one critical conclusion – that the personal property and DNA of three senior WIPO employees was stolen and analyzed by Swiss officials prior to the victims’ immunity being properly lifted – is established beyond question, by the HUG report of June 9, 2008. Based on the reported finding that Mr. Donovan’s DNA was found mixed with that of one of the victims, coupled with the known fact that Mr. Donovan was a member of the

WIPO security team and was copied on the February 8, 2008 memorandum to Mr. Idris, we can confidently infer that he very likely participated in the gathering of the property. And because the property ended up in the hands of the Swiss forensic analysts, we can reasonably infer that Mr. Donovan provided it to the Swiss authorities for that purpose.

33. Since we know that immunity was not lifted until two months later, it appears quite well substantiated that a violation of human rights occurred in March 2008 at WIPO. The question then becomes: who participated in this unlawful act, besides Mr. Donovan? And why did this happen? Both questions can be addressed by considering the circumstantial evidence. Professional investigators always begin by assessing two important issues: motive and opportunity. Among the various possible actors, there was only one with a motive to gather DNA evidence from people he suspected, evidence that the then-current Director General and his Chief of Staff would not allow to be taken. Mr. Gurry had been the subject of personal attacks on his character through these anonymous letters, and clearly wanted to find out who was responsible. And did he have the opportunity to request that someone do this for him? As a Deputy to Mr. Idris, he was effectively second in command of the organization. It does not stretch our understanding of human behavior to infer that he could have requested or even directed Mr. Donovan to do this, or that he could have asked Ms. Wang to make the request for him.

34. One can test the strength of these inferences by considering the reasonableness of alternative possibilities. For example: how likely is it that Mr. Donovan alone came up with the idea to break into the victims' offices, and to take such a risk without the knowledge and direction of superiors, including the one who had a personal stake in the outcome?

35. Investigators also look at subsequent behavior as evidence of consciousness of guilt. In this respect, Mr. Gurry's conduct provides very strong inferences. The evidence shows that in 2011 he took the extraordinary step of ordering the transfer to Singapore of one of the victims of the theft – a transfer that he knew she could not accept for family reasons and therefore would result in the loss of her job. Why would he take the risk of making such a strange personnel decision, if not to intimidate and silence a witness, to keep buried a story that he knew would expose his misconduct? And in 2013, when the matter looked likely to surface he again engaged in inexplicable, risky behavior: attempting to find ways to terminate the Director of IAOD, and apparently arranging with Mr. Donovan to send a letter to the IAOC making allegations that, according to Mr. Donovan, Mr. Gurry had known about for several months but never acted on.

36. Finally, one should consider Mr. Gurry's public response to these allegations, once they became known in late 2013 and early 2014. He has not denied them, or offered any explanation for them. In fact, on several occasions a

member of the U.S. Congress requested, through the Australian Ambassador in Washington, that Mr. Gurry respond to a simple set of eight questions that would help shed light on the matter. (A copy of these questions is attached as Exhibit 14.) These requests and questions have never been acknowledged, much less answered. And as noted at the beginning of this report, Mr. Gurry's most recent approach to questions about this issue is simply to attack the press and call the matter "trivial" and "unsubstantiated". If there were an innocent explanation for these facts, we certainly would have expected to hear it by now. The fact that Mr. Gurry has refused to provide any explanation at all is itself evidence from which one can reasonably infer consciousness of guilt.

37. It is beyond argument that the allegations relating to the DNA affair are "substantiated." Indeed, the evidence is compelling.

The issue has never been properly investigated; open questions remain

38. One of Mr. Gurry's reactions when confronted with this matter is to say that the allegations are "old" or that "there's nothing new that I haven't heard before." But such statements, while technically true, actually prove an important point: the facts of this matter, like an unsolved crime, have never been thoroughly investigated. As noted above, this is not for lack of trying by the victims, who naturally wanted to know why such an outrage had happened to them. And the WIPO internal investigative process was so corrupted that it led to the indefensible outcome that an investigation was not justified. In short, while this matter is old, its smell has not improved with age, and it is past time to open it to objective examination.

39. Under the circumstances it would be reasonable to demand that Mr. Gurry appear before the governing bodies of WIPO and immediately respond to questions such as those set forth in Exhibit 14. His willingness to provide full and unreserved answers can be judged at that time, and if found wanting an independent investigation can be ordered.

We cannot wait for the outcome of the Brown complaint to ILOAT

40. On February 7, 2014 Dr. Brown filed a complaint with the ILOAT, raising the DNA affair among other matters, and asking for review of WIPO's administrative decision not to investigate the issues that she had raised in her request of November 2012. It would be improper to wait for the outcome of that proceeding before acting on the report made here.

41. In the first place, the ILOAT proceeding is likely to take years to resolve. In the meantime, the Member States are faced here with evidence of unexplained violations of human rights in WIPO, violations which its Director General dismisses as "trivial". This situation cannot be tolerated for a day longer than is

necessary, because the need for clarity of the principles that drive the governance of this institution is immediate.

42. Second, the ILOAT proceeding is not a substitute for action by the Member States on this report, simply because it refers to similar evidence. In fact, after waiting the expected two years or more, we could find the ILOAT case dismissed on procedural grounds, because Dr. Brown was at the time of its filing no longer employed at WIPO. This was exactly the stated reason for rejection of her case by the WIPO Appeal Board. And even if the ILOAT reached the merits, its remit is narrow, dealing only with the administrative question of whether WIPO properly applied its procedures. It cannot conduct an investigation on its own, nor ensure that any investigation it might order will be carried out in an objective and conflict-free manner.

43. Third, to wait for the ILOAT case is to suggest that fundamental issues like those presented here should be left to WIPO staff members to pursue on their own. This would abdicate the responsibility of the Member States themselves, sitting as the General Assemblies and the Coordination Committee, to confront and address critical problems of governance at WIPO. Questions of whether the Director General engaged in violations of fundamental human rights cannot be outsourced to individual staff.

PROCUREMENT CORRUPTION

44. I am informed that, in the summer of 2013, WIPO began a competitive procurement process, to hire a consulting firm to develop an information assurance strategy. This Information Technology (IT) project was directed at improving WIPO's ability to manage information access and availability.

45. In accordance with established, rules-based procedures, existing IT resources in WIPO were used to identify a set of companies that were deemed qualified to provide these services. A package of information was then prepared, including the proposed Terms of Reference (TOR) for the planned contract. (A copy of a TOR for this project is attached as Exhibit 15.) The package was then sent out to the list of selected companies, asking them to submit bids.

46. I understand that, once the bid package was released, Mr. Gurry complained that it had not been sent to a particular Australian company, Argo Pacific, which was run by a friend of his, Paul Twomey. As a result, the package was called back, and apparently modified in certain respects and re-started (this time including Argo Pacific in the list of requested bidders) in or around September 2013.

47. The WIPO procurement rules require that the internal committee constituted to assess competitive bids establish in advance a formula for scoring the bids when they would be received. This standard practice results in a list of various

factors relevant to a decision, such as price, technical competence, and applicable experience, and assigns to each factor a numerical weighting that will allow the scoring to be computed. The purpose of this advance structure is to increase objectivity, and to mitigate the impact of any after-the-fact justifications for decisions that might otherwise be taken for the wrong reasons. In this case, I understand that the committee had assigned a normal weighting to price, reflecting the view that the cost to WIPO of this service was an important factor.

48. I am informed that, when the bids were received and opened, and the committee met to rank the bidders, it was immediately obvious that Argo Pacific could not prevail, since its bid was 40-50% higher than the next lower bid. Therefore, although Argo Pacific scored high on technical competence, the committee's recommendation was to award the contract to another bidder. I am further informed that when Mr. Gurry learned of this result, he directed the committee to change the formula, so that price would not be so important and Argo Pacific could win the competition. However, the procurement rules did not allow changing the formula after the bids were received in order to produce a desired result. Therefore, I understand that the committee maintained its recommendation to award the contract to the other bidder, while noting that, if price were not important, Argo Pacific could be chosen because it was very well qualified.

49. At this point, I understand that Mr. Gurry directed that this contract be removed from the competitive bidding process and awarded directly to Argo Pacific, which has very recently begun work on the project. The procurement rules allow "exceptions to competition" and the direct award of contracts only under specified circumstances, such as when an emergency exists, there is no competitive marketplace for the services, and the like. (A copy of a relevant excerpt from the WIPO Procurement Manual is attached as Exhibit 16.)

50. While none of the listed exceptions would seem to apply in this situation, paragraph 85 of the rules allows direct award if the DDG for Procurement determines that competitive solicitation "will not give satisfactory results." Whether or not this justification was attempted in this case, I respectfully submit that it cannot properly be applied where the interruption of the normal competitive procurement happened at the request of the Director General, in order to favor the selection of a company run by a personal acquaintance. Given at least the appearance of impropriety in those circumstances, such an award seems improper no matter how qualified the company might be.

51. While the seriousness of this interference with a procurement does not rise to the same level as a violation of human rights, it nevertheless must be reported. Furthermore, I respectfully submit that it represents a disturbing example of behavior that calls for a re-examination of governance procedures at WIPO to ensure the independence and integrity of financial decision-making.

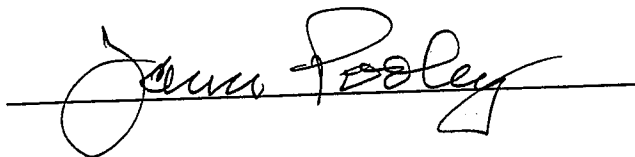
RELIEF REQUESTED

52. I respectfully request that you demand immediate answers and explanations from Mr. Gurry regarding the foregoing matters, and that if he fails to do that, he be required to step aside from his duties pending the outcome of an investigation by professionals chosen by, and responsible to, the Member States and completely independent of the Organization. During the time of suspension, Mr. Gurry's duties may be performed by a Deputy. In order not to call into question my motives, I will not serve in that capacity. I also respectfully suggest that Ms. Wang would not be appropriate since she is a witness in the underlying matter, and Mr. Onyeama has been an announced candidate in competition with Mr. Gurry. Therefore, it would be reasonable to hand the reins to the remaining Deputy, Christian Wichard. Mr. Wichard is quite capable of serving effectively as Acting Director General.

53. Although as a Deputy Director General my appointment is subject to a vote of approval by the Coordination Committee, based on what I have seen at WIPO I expect an attempt to retaliate against me for making this report. Therefore I also respectfully ask that you remain available to intervene in the event it becomes necessary to protect me against such retaliation. I believe that my report qualifies for protection under the whistleblower policies of the UN (ST/SGE/2005/21 Section 4) and of WIPO (Office Instruction 58/2012, paragraph 14).

Dated: April 11, 2014

Respectfully submitted,

A handwritten signature in cursive script, reading "James Pooley", written over a horizontal line.

James Pooley, Deputy Director General, WIPO